

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:NER:MAN:TL-N-1169-00  
PLDarcy

date:

to: Chief, Examination Division, Manhattan District  
Attn: Mr. Philip Bogitish

from: District Counsel, Manhattan District, New York

subject:

Tax Year Ended November [REDACTED], [REDACTED]

Uniform Issue List # 6231.03.00 and 6229.02-00

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This memorandum responds to your request for advice regarding whether the statute of limitations bars assessment of Subpart F income attributable to [REDACTED] (" [REDACTED] ") for the taxable year ended November [REDACTED], [REDACTED]. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

ISSUE:

Whether the statute of limitations bars assessment of Subpart F income attributable to [REDACTED] for the taxable year ended November [REDACTED], [REDACTED].

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CONCLUSION:

We conclude that the statute of limitations does not bar assessment of Subpart F income attributable to [REDACTED] for the taxable year ended November [REDACTED], [REDACTED].

FACTS:

THE ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.

A. INTRODUCTION

The Examination Division is currently auditing the taxable year ended November [REDACTED], [REDACTED] of [REDACTED], a Delaware limited partnership subject to the uniform partnership audit procedures. I.R.C. § 6221 et. seq. You have tentatively determined that [REDACTED] failed to report substantial Subpart F income on its Federal partnership income tax return ("Form 1065") for the taxable year ended November [REDACTED], [REDACTED].

B. THE SOURCE OF THE SUBPART F INCOME

During [REDACTED], [REDACTED] was the [REDACTED] percent general partner of [REDACTED] ("[REDACTED]"). [REDACTED] was a Delaware limited liability company. For the taxable year ended November [REDACTED], [REDACTED] filed a Form 1065 with the Internal Revenue Service. [REDACTED] also filed an income tax return with Inland Revenue in the United Kingdom. Because one of its partners is a flow through entity, the [REDACTED] taxable year of [REDACTED] is subject to the uniform partnership audit procedures.

During [REDACTED], [REDACTED] was a [REDACTED] general partner of [REDACTED], a foreign partnership organized under the laws of the United Kingdom. For the year ended November 25, [REDACTED], [REDACTED] filed an income tax return with Inland Revenue in the United Kingdom. [REDACTED] also filed a Form 1065 with the Internal Revenue Service, in which it reported United States source income. Because one of its partners is a flow through entity, the [REDACTED] taxable year of [REDACTED] is subject to the uniform partnership audit procedures.

[REDACTED] was the [REDACTED] percent owner of [REDACTED]

██████████ ("██████████"), a controlled foreign corporation located in the United Kingdom. ██████████ filed a Form 5471 for the taxable year ended November ██████████, with the Form 1065 of ██████████. During the audit of ██████████, the examination team has tentatively determined that ██████████ failed to report approximately \$██████████ Subpart F income from ██████████.

The statute of limitations for assessment of partnership items of ██████████ and ██████████ has expired. In memoranda dated February 15, 2000 and March 21, 2000 concerning ██████████, we concluded that ██████████ is currently the TMP of ██████████ for the taxable year ended November ██████████, ██████████. The Internal Revenue Service and ██████████ have executed a Form 872-P, which has extended the statute of limitations for the assessment of ██████████ partnership items and affected items until ██████████.

#### DISCUSSION:

Sections 951 through 972 of the Internal Revenue Code ("Subpart F") contain the rules that require United States shareholders to include in their gross income the earnings of a controlled foreign corporation. The purpose of these sections was to impose an anti-deferral because United States persons that conduct foreign operations indirectly as shareholders of a foreign corporation (versus directly through a foreign branch) are generally not taxed on the foreign corporation's earnings until the earnings are repatriated to the United States.

The International Examiner has tentatively determined that ██████████ failed to report approximately \$██████████ Subpart F income from ██████████. The examination team has requested us to advise them on whether the statute of limitations bars the assessment of Subpart F income attributable to ██████████ and derived from ██████████ for the taxable year ended November ██████████, ██████████. The examination team has expressed concern because the statute of limitations for assessment of partnership items of ██████████ and ██████████ has expired.

Section 6229(a) extends the period for assessing any Federal income tax attributable to any partnership item for the partnership's taxable year to the end of the 3-year period following the later of (1) the date on which the partnership return for such taxable year was filed, or (2) the last day for filing a return for that year. See also I.R.C. §

6501(n)(2) (providing period to assess partnership items can be extended as provided for under the provisions of I.R.C. § 6229). Pursuant to I.R.C. § 6229(b)(1)(B) the Internal Revenue Service can extend the statute of limitations with respect to the assessment of partnership items by entering into an agreement with the TMP (or any other person authorized by the partnership in writing to enter into such an agreement) before the expiration of such period. The Internal Revenue Service and [REDACTED] have executed a Form 872-P, which has extended the statute of limitations for the assessment of [REDACTED] partnership items and affected items until [REDACTED].

Section 6231(a)(3) defines a partnership item "as any item required to be taken into account for the partnership's taxable year under any provision of subtitle A to the extent regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level." Pursuant to Treasury Regulation § 301.6231(a)(3)-1(a)(1)(i) items of income, gain, loss, deduction, or credit of the partnership are partnership items. Subtitle A of the Internal Revenue Code consists of I.R.C. §§ 1 through 1564 and includes Subpart F.

Based upon the definition of the term "partnership item" contained in the Internal Revenue Code and the Treasury Regulations, we conclude that any Subpart F income of [REDACTED] is a partnership item of [REDACTED]. Therefore, the statute of limitations on assessment of any Subpart F income belonging to [REDACTED] is extended pursuant to the provisions of I.R.C. § 6229.

Pursuant to I.R.C. § 6229(b)(1)(B) the Internal Revenue Service and the TMP of [REDACTED] have executed a Form 872-P, which has extended the statute of limitations for the assessment of [REDACTED] partnership items and affected items until [REDACTED]. The fact that the statute of limitations for assessment of partnership items of [REDACTED] and [REDACTED] has expired has no bearing on our determination. The Subpart F income of [REDACTED] is a partnership item of [REDACTED] and not of [REDACTED] or [REDACTED]. Thus, the only relevant statute of limitations is that of [REDACTED]. Accordingly, the statute of limitations does not bar assessment of Subpart F income attributable to [REDACTED] for the taxable year ended November [REDACTED], [REDACTED].

We again remind you that this advice is subject to review by the National Office. As discussed on page one, we will contact you within two weeks of the date of this memorandum to discuss any comments the National Office may have regarding this advice. Should you have any questions regarding this matter, please contact Paul Darcy at (212) 264-5473 extension 256.

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